

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ALPHONSE GAINER,

Petitioner,

V.

M. BRECKON, WARDEN USP LEE,

Respondent.

Case No. 7:19CV00450

ORDER

By: James P. Jones
United States District Judge

This matter is before me on the magistrate judge’s Report and Recommendation (“Report”) recommending that I deny the respondent’s Motion for Summary Judgment as to this Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241. After review of the record, I will adopt the Report.

Petitioner Alphonse Gainer, a federal inmate, claims that he lost earned good conduct time (“GCT”) without due process in prison disciplinary proceedings.¹ On December 13, 2013, Gainer was charged in Incident Report (“IR”) No. 2526247, with assault (“Claim I”). That same day he was also charged in IR No. 2526280 with other offenses (“Claim J”). On January 5, 2014, he was charged in IR No. 2533891 with fighting (“Claim K”). After a hearing, the Disciplinary Hearing

¹ Gainer's initial petition raised multiple, similar claims about other disciplinary proceedings. The court construed his petition as raising twelve separate due process claims, Claims (A) through (L), and severed those claims into eight separate cases. This case concerns Claims (I), (J), and (K).

Officer (“DHO”) found Gainer guilty and sanctioned him with the disallowance of GCT. Gainer alleges that the DHO failed to provide him with a written statement of the evidence relied on and the reasons for the sanctions imposed (“DHO report”).

The Report recommends finding that Gainer received copies of the DHO reports regarding Claims (I), (J), and (K) in 2019 during the course of this litigation, *see* ECF Nos. 11-11, 11-12, 11-13. Finding material facts in dispute regarding the respondent’s defenses, however, the Report recommends denying the Motion for Summary Judgment. No party has filed objections to the Report, and I find no clear error.

For the stated reasons, it is **ORDERED** as follows:

1. The Report and Recommendation, ECF No. 18, is ADOPTED in full;
2. The respondent’s Motion for Summary Judgment, ECF No. 10, is DENIED;
and
3. Petitioner Gainer is hereby DIRECTED TO SHOW CAUSE within 21 days from the entry of this Order why this case should not be dismissed as moot, because he now has copies of the DHO Reports related to Claims (I), (J), and (K).

ENTER: September 30, 2020

/s/ James P. Jones
United States District Judge